

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KURT E. BROWN

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Appeal No. 2002-1878  
Application No. 09/246,257

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ON BRIEF

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Before ABRAMS, PATE, and NASE, Administrative Patent Judges.  
PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 5 and 7 through 19. Claim 6 has been canceled. These are all the claims in the application.

The claimed invention is a system and method for conveying a string of air-filled packing cushions between the machine in which they are made and a storage bin from which they are dispensed for use. The conveyor used to convey the string of air-filled packaging comprises a vertical section and an angled

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section on an angle with the vertical section of on the order of 135°. The conveying air is generated by a blower mounted outside the duct and is directed by a baffle which directs the air upwardly longitudinally along the vertical duct.

The claimed subject matter may be further understood with reference to the appealed claims appended to appellant's brief.

The references of record relied upon by the examiner as evidence of obviousness are:

|                          |           |              |
|--------------------------|-----------|--------------|
| Wiseman et al. (Wiseman) | 4,744,702 | May 17, 1988 |
| Long et al. (Long)       | 5,209,387 | May 11, 1993 |

AirFil brochure "The Flexible approach to air-filled packaging"

#### THE REJECTION

Claims 1 through 5 and 7 through 19 stand rejected under 35 U.S.C. § 103 as unpatentable over the AirFil brochure in view of Long and Wiseman. AirFil discloses an apparatus and method for making air pillow packing material and mechanically conveying it to a hopper storage bin. Long discloses that it is known in the art to make use of duct work and a source of pressurized gas to convey a web of material 46. Long is further relied on to show baffles. Wiseman discloses a pneumatic conveyor which can move light objects and involves few moving parts. According to the examiner, it would have been obvious to have modified the

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method and apparatus of the AirFil brochure by substituting a pneumatic conveyor including duct work and a blower as taught by Long and Wiseman.

#### OPINION

We have carefully reviewed the claimed subject matter in light of the arguments of the appellant and the examiner. As a result of this review, we have reached the determination that the applied prior art does not establish the prima facie obviousness of the claimed subject matter. Accordingly, the rejection of the claims on appeal is reversed. Our reasons follow.

We are in agreement with the examiner that the AirFil brochure discloses a machine for manufacturing a continuous string of air-filled cushions. With respect to page 3 of the brochure, apparently a web of manufactured cushions exits the machines toward the floor where the web is taken by a conveyor and lifted to be dumped in a bin. Apparently, an operator removes the cushions from the bin to use as packing material as he or she fills the boxes on the roller conveyor for shipment. There is no indication of what type of lifting conveyor is used for the illustrated installation, although a specific type of conveyor is obviously commercially viable.

We further agree with the examiner as to the scope and content of the Long and Wiseman references. Long discloses a non-contact air film conveyor intended for conveying a web of film at high speed. The conveyor is formed of a duct with an air plenum or pressure chamber 18 in the base of the duct with air holes from the pressure chamber where injected air lifts and transports a strip of film 46. Long discloses that his conveyor is designed to transport "strips of web material having surface coatings or finishes sensitive to contact by adjacent surfaces during conveying." Col. 2, lines 7-10. Wiseman is directed to a conveyor of modular construction that eliminates the need to custom manufacture each conveyor. Wiseman states that air conveyors can convey relatively light objects without the use of moving parts.

We are in agreement with appellant that there is no motivation or suggestion in this prior art, taken as a whole, for the substitution of an air conveyor such as is disclosed by Wiseman or Long for the unknown but clearly suitable conveyor shown in the AirFil brochure. There is no disclosure of the suitability of an air conveyor as disclosed by Long or Wiseman for conveying a web of balloon-like material. In our view, the combination of references is based on an impermissible hindsight

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reconstruction of appellant's claimed subject matter. Thus, the combination of references cannot support a proper prima facie case of obviousness.

Additionally, we find ourselves in agreement with appellant that notwithstanding the disclosure in the abstract of Long, the only baffle disclosed therein is baffle 36. The other identified structure is side walls 28 and 32 and top wall 30. Furthermore, there is no disclosure of baffle 36 causing longitudinal flow. The air impinging thereon is apparently for the purpose of flattening the strips in the conveyor and is directed downwardly. Col. 5, lines 33-35.

The record reflects that the examiner has considered possible double patenting with U.S. Patent No. 5,873,215. The record does not reflect whether the examiner has considered the issue of obviousness double patenting with respect to companion Application No. 09/217,867, Appeal No. 2002-0675.

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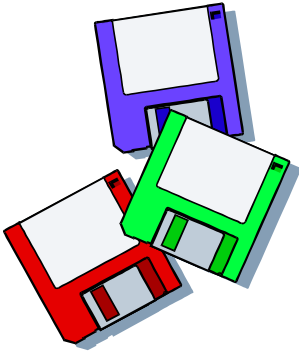
REVERSED

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|-----------------------------|---|-----------------|
| NEAL E. ABRAMS              | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| WILLIAM F. PATE, III        | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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| JEFFREY V. NASE             | ) |                 |
| Administrative Patent Judge | ) |                 |

WFP/LBG

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APJ NASE

APJ ABRAMS

DECISION: REVERSED

Prepared: August 4, 2003

Draft                  Final

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PALM / ACTS 2 / BOOK

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